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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/687,267	10/15/2003	Burns P. Phillips	50243-0001	9960

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EXAMINER
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JOHNSON, VICKY A

ART UNIT	PAPER NUMBER
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3682

DATE MAILED: 06/30/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/687,267

Applicant(s)

PHILLIPS ET AL.

Examiner

Vicky A. Johnson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 15 April 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

**DETAILED ACTION**

***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claims 1, 10, and 17 it is unclear how the retractor shaft can be spaced by itself from the clamp and the support. The Examiner cannot determine the meaning of the limitation even with Figure 6, which the applicant states is what is trying to be claimed.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Bookwalter et al (US 6,241,659), as best understood.

Bookwalter et al disclose a retractor assembly comprising: a support (16); a clamp (30) selectively positionable at a desired location on the support (see Fig 2); a retractor shaft (42) connected to the clamp extending away from the clamp and support (see Fig 2), and having an end with a shaft axis extending through the end of the

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retractor shaft (see Fig 2) said end spaced by the retractor shaft from the clamp and support (see Fig 2, the left side of 32 is spaced by the shaft from the clamp); a connector (32) connected to the retractor shaft at the end of the retractor shaft (see Fig 2); and a retractor blade (320) connected to the connector by a stem (310), said stem retained to the shaft by the connector and angularly positionable relative to the shaft axis up and down intermediate a range of  $\pm$  twenty degrees relative to the shaft axis about a tilting axis (col. 3 lines 33-46).

Re claim 2, wherein the connector allows pivoting of the stem side to side about a rotation axis intermediate a range of about  $\pm$  60 degrees relative to the shaft axis about a rotation axis (see Fig 2).

Re claim 3, wherein the tilting axis is spaced from and perpendicular to the rotation axis (see Fig 2).

Re claim 4, wherein the clamp grips the support when secured at the desired location on the support (see Fig 2).

Re claim 5, wherein the support is a retractor support ring (see Fig 1).

Re claims 6, 14, 16, and 18, wherein the retractor shaft is substantially linear and extends along the axis (see Fig 2).

Re claims 7 and 12, wherein the connector further comprises a flange clevis (66) connected to the retractor shaft, which receives a pivot flange (44) connected to the stem of the retractor blade, and said pivot flange is pivotable  $\pm$  twenty degrees about a rotation axis (see Fig 2), said rotation axis perpendicularly oriented to the shaft axis and tilting axis (see Fig 2).

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Re claims 8 and 13, further comprising a blade attachment boss (56) and the pivot flange is connected to the blade attachment boss, which connects to the stem to the retractor blade (see Fig 2).

Re claim 9, further comprising side slots (60) in the blade attachment boss and the blade attachment boss is connected by a pin (58) restrained by the side slots.

Re claims 11 and 19, a slot (70) limiting the angle of the retractor blade relative to the shaft axis (see Fig 2).

Re claim 20, the slot is intersected by the shaft axis (see Fig 2)

### ***Response to Arguments***

Some further comments regarding the applicant's remarks are deemed appropriate.

The applicant argues that the claims have been amended to require that the "connector at the end of the retractor blade be spaced from both the clamp and the support", but the claims were amended to say that "said end (of the retractor shaft) spaced by the retractor shaft from the clamp and support", which as seen in Figure 2 the end (left side of 32) is spaced from the clamp and the support. It is unclear from the claims and the remarks, what exactly the applicant is trying to claim.

It is also argued that the blade portion of the retractor of the Bookwalter reference is not angularly positionable, but the retractor blade is angularly positionable through the clamp.

The applicant's remarks have been accorded due consideration, however, they are not found fully persuasive.

***Conclusion***

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vicky A. Johnson whose telephone number is (571) 272-7106. The examiner can normally be reached on Monday-Friday (7:00a-3:30p).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David A. Bucci can be reached on (571) 272-7099. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Vicky A. Johnson 6/24/05  
Examiner  
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